

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

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MAY 3 10 35 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-1-9a

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Public Water Systems, Bottled  
Water, and Laboratory Certification

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:     
  

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*for*   
Ruth Ann Panepinto, Ph.D., Secretary

# FISCAL NOTE FOR PROPOSED RULES

Rule Title: Public Water Systems, 64 CSR 3

Type of Rule: X Legislative        Interpretive        Procedural

Agency Department of Health and Address Building 3, Capitol Complex  
Human Resources Charleston, W. Va. 25305

1. Effect Of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$198,000	\$187,000
Personal Services				125,000	125,000
Current Expense				61,000	61,000
Repairs and Alterations					
Equipment				12,000	1,000
Other					

## 2. Explanation of above estimates.

The Department estimates that additional staff consisting of one engineer, two data management personnel and two technicians will be required to handle the increased technical and data management responsibilities specified by the new federal requirements. Current expenses includes employee benefits, travel and routine office operational costs. Equipment includes office furniture and computer and printing equipment.

## 3. Objectives of these rules:

The proposed changes revise and retitl Public Water Systems, Bottled Water, and Laboratory Certification, 64 CSR 3. Some changes adopt recent National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations. Adoption of these standards will allow the State to retain primacy for the national "Safe Drinking Water Act" which regulates the State's 2,500 public water supply systems. Retaining primacy means that the State, rather than the Federal government, will enforce compliance with mandatory Federal standards.

Other proposed amendments adopt new State standards, correct errors, adopt by reference the newest federal standards for drinking water laboratory certification, and make a few stylistic changes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The added enforcement responsibilities will require additional general revenue funds. Failure to adopt the revised rule will result in the loss of approximately \$560,000 in federal funding annually and federal, rather than State, administration of drinking water standards.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

Some public water treatment plants may be required to upgrade facilities to meet the new federal treatment requirements. Cost increases required by the new federal standards will vary widely, depending on the individual system. Data to provide specific estimates for individual systems is not available. The Division of Health will assist individual systems to minimize costs, but many of West Virginia's marginal systems will have difficulty complying. Larger systems are not likely to incur any appreciable new costs. Availability of water treated to meet current national standards may encourage location of new businesses in West Virginia.

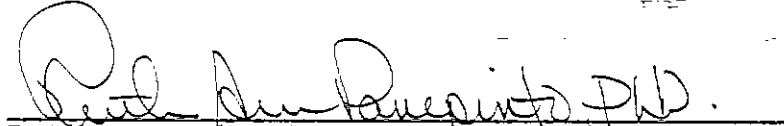
It should be emphasized that these upgrade costs will be incurred regardless of whether or not the State adopts the new federal standards. If the proposed amendments are not adopted, the standards will be enforced by the federal government.

C. Economic Impact on Citizens/Public at Large.

The economic impact for the public at large will be negligible. Those systems which are required to upgrade facilities will likely increase rates to their customers (if approved by the Public Service Commission). The economic outlook may be improved in those areas in which water systems are upgraded.

Date January 22, 1992

Signature of Agency Head or Authorized Representative



Ruth Ann Panepinto, Ph.D., Secretary  
Department of Health and Human Resources

DATE: May 3, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Health and Human Resources

LEGISLATIVE RULE TITLE: Public Water Systems, 64 CSR 3

1. Authorizing statute(s) citation W.Va. Code §16-1-9a

2. a. Date filed in State Register with Notice of Hearing:

February 2, 1993

b. What other notice, including advertising, did you give of the hearing?

Mailed Notice of Comment Period and proposed changes to all public water systems, local health departments and various interested associations.

c. Date of hearing(s): Public comment period ended March

4, 1993.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

May 3, 1993

f. Name and phone number of agency person to contact for additional information:

Kay Howard, 558-3223

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

## RULE ABSTRACT

Date: February 1, 1993

Agency: Department of Health and Human Resources

Rule Title: Public Water Systems

CSR Title and Series: 64 CSR 3

Type: Legislative

Summary: The proposed changes revise and retitle Public Water Systems, Bottled Water, and Laboratory Certification, 64 CSR 3. Some changes adopt recent National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations. Adoption of these standards will allow the State to retain primacy for the national "Safe Drinking Water Act" which regulates the State's 2,500 public water supply systems. Retaining primacy means that the State, rather than the Federal government, will enforce compliance with mandatory Federal standards.

Other proposed amendments adopt new State standards, correct errors, adopt by reference the newest federal standards for drinking water laboratory certification, and make a few stylistic changes.

For further information contact: William Herold, Office of Environmental Health, Bureau of Public Health, 815 Quarrier Street, Suite 418, Charleston, WV 25301, telephone 558-2981 or the Regulatory Development Section, Office of Legislation and Regulation, Department of Health and Human Resources, Bldg. 3, Capitol Complex, Charleston, WV 25305, telephone 558-3223.

Copies of the federal drinking water standards are available from the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone (215) 597-8227 or can be viewed at the Office of Environmental Health or in any public library which is a Government Documents Depository Library. Copies of the Manual for the Certification of Laboratories Analyzing Drinking Water adopted by reference are available from the Office of Laboratory Services, Division of Health, 167 Eleventh Avenue, South Charleston, WV 25303-1137.

[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES  
DIVISION OF HEALTH

PUBLIC WATER SYSTEMS

SERIES 3

199\_\_

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For Filing with the  
Legislative Rule-Making Review Committee

[PROPOSED]  
WEST VIRGINIA ADMINISTRATIVE RULES  
DIVISION OF HEALTH  
PUBLIC WATER SYSTEMS  
64 CSR 3

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FILED

[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES

DIVISION OF HEALTH

SERIES 3

PUBLIC WATER SYSTEMS, BOTTLED WATER,  
AND LABORATORY CERTIFICATION

MAY 3 10 35 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§64-3-1. General.

1.1. Scope - This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water.

1.2. Authority - W.Va. Code §16-1-9a.

1.3. Filing Date -

1.4. Effective Date -

1.5. Supersession or Repeal of Former Regulations - ~~This rule supersedes and repeals the following West Virginia Board of Health Legislative rules:--Public Water Supply Regulations, 64 CSR-3,--1982;--Volatile Synthetic Organic Chemicals, 64-CSR-61, 1989;--and--Plumbing Requirements, 64-CSR-57,--1989.~~ This rule amends and reenacts Public Water Systems, Bottled Water and Laboratory Certification, 64 CSR 3, 1991.

§64-3-2. Application and Enforcement.

2.1. Application - This rule applies to public drinking water systems, to bottled water treatment plants and distributors and to laboratories desiring certification to perform analytic tests of drinking water.

2.2. Enforcement - ~~Enforcement of this rule is vested with~~ This rule is enforced by the director of the division of health.

§64-3-3. Definitions.

3.1. Bottled Water - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

3.2. Bottled Water Distributor - A person who buys and sells bottled water on a wholesale basis.

3.3. Community Water System - A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

4/29/93

3.4. Director - Director of the division of health or his or her designee.

3.5. Non-Community Water System - Any public water system that is not a community water system.

3.6. Person - Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.7. Public Water System - Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections and includes:

(1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and

(2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

A public water system does not include a system which meets all of the following conditions:

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition;

(3) which does not sell water to any person;

(4) which is not a carrier conveying passengers in interstate commerce.

3.8. Sanitary Survey - An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such the source, design, facilities, equipment, operation and maintenance for producing and distributing drinking water, as described in the federal regulations adopted herein.

\$64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions.

4.1. No person may construct, alter, renovate or award a contract for any construction, alteration or renovation of a

public water system without obtaining a permit from the director.

4.2. Application for a permit to construct, alter or renovate shall be made to the director on forms prescribed by the director at least forty-five (45) days prior to the date on which approval by the director is desired. The application shall be accompanied by an engineering report, maps, and detailed plans and specifications of the proposed construction, alteration or renovation prepared by or under the direction of a registered professional engineer.

4.3. A permit to construct, alter or renovate may be revoked by the director for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate shall be valid for two (2) years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the director in accordance with Design Standards for Public Water Supply Systems, 64 CSR 42.

4.6. To the extent practical, all new or expanded facilities shall be located outside of the one-hundred-year flood plain.

4.7. The director has the authority to issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage, or distribution facilities of the system before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not significantly affect the quality or quantity of water supply service rendered. ~~Provided,--That~~ The work shall be done in accordance with the provisions of Design Standards for Public Water Supply Systems, 64 CSR 47.

A written description of the proposed additions, alterations or renovations shall be submitted to the director no less than ten (10) working days prior to implementing such the additions, alterations or renovations under this provision. The director shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five (5) days of receipt of the description.

4.9. All public water supply systems using a raw water source which is open to the atmosphere or subject to surface runoff shall, at a minimum, provide filtration treatment.

§64-3-5. Permit to Operate a Public Water System.

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted herein.

5.2. The director shall have the authority to develop a program for the issuing of a permit to operate a public water system. Such The permit shall be renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted herein. Such The permit program shall be administered uniformly. No permit shall be granted until after the director has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, a written application to transfer the permit to operate shall be made to the director by the new owner at least fifteen (15) days before the proposed change.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

§64-3-6. Inspections and Sanitary Surveys of Public Water Systems.

6.1. Public water systems shall be inspected as scheduled by the director and sanitary surveys shall be conducted by the director in accordance with the federal regulations adopted herein.

6.2. The director has the right of access to all parts of a public water system and shall be furnished access to all information and records required to be kept by this rule and the federal regulations adopted herein.

§64-3-7. Public Water System Disinfection Requirements.

7.1. Disinfection with chlorine, chlorine dioxide, chloramine or ozone is required of all public water systems, provided the requirements of Section 7.6 of this rule are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective contact time.

7.3. The minimum chlorine contact time for groundwater systems not influenced by surface waters is thirty (30) minutes from the point of application to the point of delivery to the first consumer or as stipulated in Design Standards for Public Water Supply Systems, 64 CSR 42. At the end of the chlorine contact time, minimum free chlorine residuals shall comply with the requirements of Table 64-3A found at the end of this rule. For such these systems, the amount of residual disinfectant in

the drinking water at the treatment plant and in the distribution system shall be determined at least once per day, or more often if considered necessary by the director.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted herein.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter in the range of 0.0 milligrams per liter to 2.0 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times.

7.7. The director ~~shall have~~ has the authority to authorize variances in the chlorine disinfection parameters specified in this section.

#### §64-3-8. Public Water System Fluoridation.

8.1. Except for water systems operated by public schools, average concentrations of fluoride present in the drinking water of a public water system, which artificially adjusts fluoride concentrations, shall be no less than the minimum and no higher than the maximum concentrations shown in Table 64-3B found at the end of this rule.

8.2. Average concentrations of fluoride present in a public school drinking water system shall be no less than three (3.0) milligrams per liter and no higher than six (6.0) milligrams per liter, with an optimum concentration of four and one-half (4.5) milligrams per liter.

8.3. The drinking water of fluoridated or defluoridated public water systems shall be monitored once per day for fluoride concentration. Records of ~~such~~ the monitoring shall be maintained in accordance with ~~Section-10~~ Sections 9 and 10 of this rule.

8.4. At least once a month, a sample of drinking water shall be submitted by the public water system to the director or to a certified laboratory for fluoride analysis.

8.5. The requirements of Section 8.2 of this rule supersede the requirements of the National Secondary Drinking Water Regulations, 40 CFR Part 143, as applicable to fluoridation of public school drinking water.

#### §64-3-9. Public Water System Control Tests and Record Maintenance

9.1. Records of microbiological, turbidity, radiological and chemical analyses, or a summary thereof, shall be retained at a convenient location on or near the premises of the public water system. ~~Microbiological, turbidity and~~ Turbidity, radiological and chemical analytical records shall be kept for ten (10) years. ~~Control tests test, microbiological and operational records shall~~ be kept for five (5) years. All tests and analyses required by this rule or the federal regulations adopted herein, with the exception of ~~turbidity and chlorine residual analyses on-site water system operational tests~~, shall be conducted by a laboratory certified by the director.

9.2. The records shall include the date, place and time of sampling; the name of the person who collected the sample; identification as to whether it was a routine distribution system sample, resample, raw or drinking water sample, or other special purpose sample; the date of the analysis; the laboratory and person responsible for performing the analysis; the analytical technique or method used for microbiological testing; and the results of the analysis.

9.3. Records of action taken by the system to correct violations of this rule or the federal regulations adopted herein shall be kept for three (3) years after the correction is completed.

9.4. Copies of written reports relating to sanitary surveys of the system shall be kept for ten (10) years.

9.5. Records concerning a variance or exemption from this rule or the federal regulations adopted herein shall be kept for at least five (5) years following the expiration of such the variance or exemption.

#### §64-3-10. Adoption of National Regulations.

~~The National Primary Drinking Water Regulations, 40 CFR Parts 141 and 142 subparts E, F, G, as amended in the Federal Register June 29, 1989 and June 19, 1990 and effective as of December 31, 1990 and the National Secondary Drinking Water Regulations, 40 CFR Part 143, in effect as of October 30, 1990, are hereby adopted by reference. The director shall use the provisions of 40 CFR 142, Subparts E, F and G, as applicable, in granting variances.~~

10.1. The following National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations, promulgated and published prior to January 1, 1993, as final rules are hereby adopted by reference:

10.1.1. 40 C.F.R. Part 141, except for Section 141.21(d)(2) and Subpart I (the lead and copper rule);

10.1.2. Subparts F and G of 40 C.F.R. Part 142, except for Sections 142.57, 142.60, 142.61, and 142.62(c)-142.62(h); and

10.1.3. 40 C.F.R. Part 143.

10.2. The Director shall use the provisions of 40 C.F.R. Part 142, Subparts F and G, as adopted in this rule as applicable in granting exemptions.

10.3. In the event of a conflict between a federal standard adopted in this rule and a state standard adopted in this rule, the more stringent standard shall apply, except as stated in Section 8.5 of this rule.

10.4. Copies of these regulations are available from:

U.S. Environmental Protection Agency  
Region III  
841 Chestnut Building  
Philadelphia, PA 19107

**§64-3-11. Bottled Water Treatment Plants and Distributors.**

11.1. No person may operate a bottled water treatment plant in this State without receiving a permit to bottle and distribute water from the director.

11.2. No person may distribute bottled water in this State without receiving a permit to distribute bottled water from the director.

11.3. Application for a permit to bottle and distribute water shall be made to the director on forms prescribed by the director. Four (4) sets of completed applications, and plans and specifications for the treatment plant shall be submitted to the director for approval at least forty-five (45) days prior to the date on which a permit from the director is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with the requirements of ~~Design-Standards-for Public-Water-Supply-Systems~~, 64-CSR-47, this rule and the requirements of the federal regulations adopted herein pertaining to primary and secondary contaminants, sodium, fluoridation, maximum contaminant levels, sampling techniques and monitoring frequencies, for a community water system, except that the monitoring frequency for microbiological contaminants shall be no less than once each week.

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, in effect as of October 30, 1990, and such these standards are hereby adopted by reference.

11.6. Each in-State bottled water treatment plant shall be inspected every twelve (12) months or as otherwise determined by the director.

11.7. An out-of-State bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the director. Four (4) copies of all materials shall be submitted. The out-of-State treatment plant shall comply with the requirements of this rule and the federal regulations adopted herein for in-State bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state wherein the treatment plant is located ~~will be~~ is considered acceptable for the purposes of this rule. The out-of-State treatment plant shall notify the director of any corrective action it is required to take by its state regulatory authority and shall notify the director of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the State who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the director. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the director. The director shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. A permit issued by the director may be revoked for failure to comply with provisions of this rule.

#### §64-3-12. Public Water System Reporting Requirements.

12.1. Unless otherwise specified in this rule or the federal regulations adopted herein, the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted herein shall be reported to the director within forty (40) days of the system's receipt of the test, measurement or analysis.

12.2. Analytical results for total trihalomethane (TTHM) analyses shall be reported to the director within thirty (30) days of the system's receipt of such the results.

12.3. Failure to comply with this rule or the federal regulations adopted herein shall be reported to the director within forty-eight (48) hours of the discovery of the violation.

12.4. Analytical results of tests performed by the laboratory of the division of health are not required to be reported.



12.5. A written summary of the public water system operation, test data, and such other information as may be required by the director shall be submitted to the director at least once per month. The director may require more frequent reports in cases where there are public health concerns.

12.6. All reports and summaries required by this rule or the federal regulations adopted herein shall be submitted in a manner or form approved by the director.

12.7. The water supply system shall submit to the director a representative copy of each type of notice distributed, posted or made available to the public or media within seven (7) days following any notification of the public of a violation of this rule or of the federal regulations adopted herein.

**§64-3-13. Certification of Laboratories to Conduct Drinking Water Tests.**

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal regulations adopted herein shall be certified by the director or by the Federal Environmental Protection Agency.

13.2. A certified laboratory shall comply with the requirements of this rule and with the requirements and criteria contained in the sections titled "Local Laboratories," "Other Considerations for Laboratory Certification," "Requirements for Maintaining Certification Status," "Criteria and Procedures for Downgrading/Revoking Certification Status," and "Training," of Chapter III, and in Chapters IV, V and VI of the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Third Edition, April, 1990, Change 1, October, 1991, and Change 2, September, 1992 and such these parts of said the manual are hereby adopted by reference.

13.3. An in-State laboratory shall submit an application form when seeking initial approval sixty (60) days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this State ~~will~~ shall be certified by the director if:

13.4.1. It has been certified by the Federal Environmental Protection Agency; or

13.4.2. It has been certified by a program for the certification of laboratories equivalent to the program of this State as determined by the director. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the director.

13.5. An out-of-state laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with Section 13.4.1 or 13.4.2 of this rule. The out-of-state laboratory shall notify the director immediately of any change in its certification status under Section 13.4.1 or 13.4.2.

13.6. ~~On-site--Inspection--~~ An on-site inspection of in-State laboratories to determine compliance with this rule and the federal standards adopted herein shall be conducted initially prior to certification, and at least every three (3) years thereafter. The division shall have the right of entry upon proper identification at such any times as considered necessary during operating hours in order to conduct such the inspections.

13.7. Certificates of approval shall be issued upon initial approval and shall be renewable on an annual basis thereafter pursuant to the conditions listed herein. Certificates issued will contain the name and location of the laboratory, a laboratory code number, the name of the laboratory director and the date of expiration of the certificate.

13.8. Certified laboratories shall notify the director when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. The director shall administer and use the criteria and procedures of the Section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the Manual for the Certification of Laboratories Analyzing Drinking Water referenced in Section 13.2 of this rule.

#### §64-3-14. Penalties.

Any person who violates any provision of this rule or orders issued hereunder, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) and each day's violation shall constitute a separate offense. In addition, thereto, the director of health or his or her authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations. For a willful violation of this rule or orders issued hereunder, a person, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars (\$5,000), and each day's violation shall be grounds for a separate penalty.

#### §64-3-15. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights,

duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-3-16. Severability.

The provisions of this rule are declared to be severable. If any provision of this rule ~~shall-be~~ is held invalid, the remaining provisions ~~shall~~ remain in effect.

TABLE 64-3A. Minimum Levels of Free Chlorine Residual at Various Water Sample pH Levels

<u>pH VALUE</u>	<u>FREE CHLORINE RESIDUAL</u>
Up to 7.0	0.4 mg/l
7.1 to 8.0	0.6 mg/l
8.1 to 9.0	1.0 mg/l

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TABLE 64-3B. Average Acceptable Range of Fluoride Concentration at Various Annual Average Maximum Daily Air Temperatures

<u>ANNUAL AVERAGE MAXIMUM DAILY AIR TEMPERATURE</u>	<u>FLUORIDE CONCENTRATION IN MILLIGRAMS PER LITER</u>		
	Lower	Optimum	Upper
53.8 - 58.3° F 12.1 - 14.6° C	0.8	1.1	1.5
58.4 - 63.8° F 14.7 - 17.7° C	0.8	1.0	1.3
63.9 - 70.6° F 17.7 - 21.4° C	0.7	0.9	1.2

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# WEST VIRGINIA RURAL WATER ASSOCIATION

**RECEIVED**

February 17, 1993

FEB 18 1993

**REGULATORY DEVELOPMENT  
SECTION**

Ms Kay Howard  
Regulatory Development  
State Capitol Complex  
Building 3, Room 204  
Charleston, West Virginia 25305

Dear Ms Howard:

I have reviewed the proposed regulatory rule on "Public Water Systems, Bottled Water, and Laboratory Certification". The portion applying to the public water systems is of particular interest to me and my organization and this is where I have focused my review.

The last sentence of paragraph 9.1 on page 6 of the proposed rule states: "All tests and analyses required by this rule or the federal regulations adopted herein, with the exception of turbidity and chlorine residual analyses, shall be conducted by a laboratory certified by the director.". Tests for fluoride concentration, pH, temperature and conductivity measurement should be added to the exceptions listed above.

Paragraph 8.3 on page 5 requires that fluoride concentrations be monitored daily in certain public water systems. This test is conducted by water plant operators who must be certified by the Director to conduct the test. Paragraph 12.5 on page 9 requires a written summary of operational data to be submitted monthly. Daily pH measurements are required of some public water systems as part of the written summary.

On page 17 of the current "Public Water Supply Regulations" is a definition of "Ground water under the direct influence of surface water". The Division of Health is currently developing policy to establish criteria to determine which ground waters in the State fall into this category. The measurement and reporting of turbidity, temperature, conductivity and pH by the system is being considered as part of the criteria.

The above suggested change is all that I have to submit on the proposed regulation. I could discern no particular problems the other changes would present to the affected systems.

Thank you for the opportunity to comment on this proposal.

Sincerely,

*Chet Fleming*  
Chet Fleming  
Ground Water Technician



Appalachian Power Company  
PO Box 2021  
Roanoke, VA 24022-2121  
703 985 2300

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MAR - 4 1993  
REGULATORY DEVELOPMENT  
APPALACHIAN  
POWER ACTION

OVERNIGHT

Regulatory Development  
State Capitol Complex  
Building 3, Room 204  
Charleston, West Virginia 25305  
Attn: Kay Howard

Re: Proposed Changes to 64 CSR 3

March 3, 1993

Dear Ms. Howard:

Enclosed with this letter, please find a copy of the document entitled, "Comments on Proposed Legislative Changes to 64 CSR 3 (Public Water Systems, Bottled Water, and Laboratory Certification)." This document represents the formal comments of Appalachian Power Company on this proposed regulatory action.

Appalachian Power Company commends the West Virginia Department of Health and Human Resources for their efforts in retaining primacy to enforce requirements of the "Safe Drinking Water Act." However, we would like to note that the monitoring costs associated with the requirements of the federal drinking water regulations are imposing a significant financial burden on both the affected Public Water Supplies and the Division of Health. The Company would, therefore, recommend that the Division adopt requirements that are no more stringent than those outlined in the federal regulations.

We appreciate this opportunity to comment on this proposed legislative action, and we are available to provide additional information and support if needed.

Sincerely,



Robert J. Robinson  
Environmental Affairs Director

RJR:d  
Enclosure

APPALACHIAN POWER COMPANY

COMMENTS ON PROPOSED LEGISLATIVE  
CHANGES TO 64 CSR 3 (PUBLIC WATER SYSTEMS,  
BOTTLED WATER, AND LABORATORY CERTIFICATION)

MARCH 2, 1993

1. TITLE 64, SERIES 3, SECTION 9.1

The last sentence in this section of the regulations states that, "All tests and analyses required by this rule or the federal regulations adopted herein, with the exception of turbidity and chlorine residual analyses, shall be conducted by a laboratory certified by the director."

Pursuant to our discussions with staff members of the Division of Health, it is our understanding that it is not the intent of this the Division to require a Public Water Supply that analyzes pH, free available chlorine, total residual chlorine, turbidity and/or alkalinity as part of routine daily operational checks to be certified by the director.

In addition, a review of the final federal Lead and Copper Rule (36 FR 26460), indicates that EPA does not require laboratory certification for the analyses of Water Quality Parameters including pH, conductivity, alkalinity, calcium, orthophosphate, silica, or temperature.

The Company is, therefore, requesting that this section of the state regulations be expanded to exempt a laboratory from certification requirements if the only analyses conducted in-house include the following:

pH	Temperature
Conductivity	Total Residual Chlorine
Alkalinity	Free Available Chlorine
Calcium	Turbidity
Orthophosphate	Silica



As outlined above, the Health Department's staff have verbally acknowledged that it is not the intent of this section of the rule to require a laboratory to obtain certification for these operational parameters. Consequently, modifying this section as outlined above will eliminate potential confusion over which laboratories must be certified.

2. TITLE 64, SERIES 3, SECTION 13.1

This section states that "all laboratories (emphasis added) providing drinking water testing results for purposes of this rule or the federal regulations adopted herein shall be certified by the director or by the Federal Environmental Protection Agency."

The Company submits that this section of the regulations is in direct conflict with Section 9.1., which currently exempts a laboratory from certification if they only test for turbidity and chlorine residual analyses.

The Company would suggest that Section 13.1 be modified to state as follows:

13.1 - All laboratories providing drinking water testing results for purposes of [compliance with] this rule or the federal regulations adopted herein shall be certified by the director or by the Federal Environmental Protection Agency for any required parameter with the exception of those parameters listed in Section 9.1 of this rule.

Section 9.1 of this rule should then be modified to exempt a laboratory from certification requirements if the only analyses conducted by that laboratory include any of the operational parameters listed in our comments on Section 9.1 of this rule.

Discussion of Public Comments Received  
Concerning Proposed Amendments to  
Public Water Systems, 64 CSR 3

The proposed amendments will revise and retitle Public Water Systems, Bottled Water, and Laboratory Certification, 64 CSR 3. The proposed new title of the rule is Public Water Systems. Some changes adopt recent federal government revisions of the National Primary Drinking Water Regulations and National Secondary Drinking Water Regulations. Adoption of these new federal standards will allow the State to retain primacy for the national "Safe Drinking Water Act" which regulates West Virginia's 2,500 public water supply systems. Retaining primacy means that the State, rather than the federal government, will enforce compliance with mandatory federal standards.

A few other proposed amendments adopt new State standards, correct errors, adopt by reference the newest federal standards for drinking water laboratory certification, and make a few stylistic changes.

A public comment period was held from February 2, 1993 to March 4, 1993. Comments were received from the Appalachian Power Company and the West Virginia Rural Water Association. Copies are attached.

1. Comment: The Appalachian Power Company commended the West Virginia Department of Health and Human Resources for their efforts in retaining primary to enforce requirements of the national Safe Drinking Water Act.

Response: The Department acknowledges the comment.

2. Comment: The Appalachian Power Company stated that the monitoring costs associated with the requirements of the federal drinking water regulations are imposing a significant financial burden on both the affected public water supplies and the Department. The Company recommended that the Department not adopt any requirements more stringent than federal standards.

Response: The Company does not identify any specific area of concern. Generally speaking, it is the Department's goal to minimize costs to water systems while protecting public health. The Company's concern most likely is with new chemical monitoring standards, which can involve considerable cost. The Department has not adopted more stringent requirements than the federal requirements for chemical monitoring. It should also be noted that the federal regulations permit some waiving of the chemical monitoring standards by the State. The Department has historically required and continues to require chlorination of public water supplies, an inexpensive procedure which leaves a residual for monitoring purposes, rather than certain other processes which do not leave such a residual. This is the only standard in the rule which is more stringent than the federal requirement.

3. Comment: Section 9.1. Both the Appalachian Power Company and

the Rural Water Association expressed concerns regarding the requirement that all tests and analyses required by the State or the federal government be conducted by a laboratory certified by the Director of the Division of Health except for turbidity and chlorine residual analyses.

The Association stated that Section 8.3 of the rule requires daily monitoring of fluoride concentrations in certain public water systems. This daily testing is to be conducted by water plant operators certified by the Director. The Association also stated that daily pH measurements are required of some public water systems as part of the written summary of operational data required by Section 12.5 of the rule.

The Association also noted that the Department is currently developing criteria, in compliance with federal requirements, to use in determining whether or not specific ground water is under the "direct influence of surface water". It identified the following as potential criterion measures under consideration: turbidity, temperature, conductivity and pH. Testing will be conducted and reported by the public water system.

The Appalachian Power Company indicated that Division of Health staff have stated that a public water supply that analyzes pH, free available chlorine, total residual chlorine, turbidity and/or alkalinity as part of its routine daily operational checks is not required to be certified as a laboratory by the director.

The Appalachian Power Company also stated that the final federal Lead and Copper Rule [to be adopted at a later date by the Department] does not require laboratory certification for the analysis of various water quality parameters including pH, conductivity, alkalinity, calcium, and orthophosphate.

The Association recommends that tests for fluoride concentration, pH, temperature and conductivity measurement should be added to the exceptions listed in Section 9.1. The Appalachian Power Company requested that Section 9.1 of the rule be expanded to exempt a laboratory from certification requirements if the only analyses conducted in-house include the following: pH; temperature; conductivity; total residual chlorine; alkalinity; free available chlorine; calcium; turbidity; orthophosphate; and silica.

Response: From the comments received, the Department believes that some clarification of Section 9.1 is needed. It is not the intent of Section 9.1 to require an on-site certified laboratory to perform operational on-site tests for the parameters noted by the Rural Water Association and the Appalachian Power Company. These tests must, however, be performed by an operator certified by the Department (See Public Water Supply Operator Regulations, 64 CSR 4) using recognized testing procedures.

The Department therefore proposes to revise the last sentence in Section 9.1 to read: "All tests and analyses required by this rule or the federal regulations adopted herein, with the exception

of on-site water system operational tests, shall be conducted by a laboratory certified by the director."

4. Comment: The Appalachian Power Company also stated the opinion that Section 13.1 of the regulations is in direct conflict with Section 9.1, which currently exempts a laboratory from certification if it performs only turbidity and chlorine residual analyses and suggested language to modify Section 13.1 to conform with their analysis and proposed amendments.

Response: The Department believes that the clarification of Section 9.1 removes the need for consideration of changes to Section 13.1.